IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.24839 OF 2006

Between:

M/s.Emami Limited, rep. by its
GPA Holder KVN Krishna Kishore

..... PETITIONER

AND

Additional Commissioner (CT) (Legal),
Office of the Commissioner of
Commercial Taxes, A.P. Hyderabad, and others..

....RESPONDENTS

THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION No.24839 OF 2006

O R D E R
(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> **"… Hon'ble Court may be pleased to issue writ, order or direction, more particularly in the nature of Writ of Mandamus, setting aside the order dated 6.10.2006 in CCT's Ref.No.LIII(2)/778/2006 passed by the 1st respondent and direct the respondent authorities not to collect penalty of Rs.4,69,500/- until disposal of the appeal in Appeal No.C/126/06-07, pending before 2nd respondent and pass …"**

The petitioner is a limited company carrying on the business in the manufacture and sale of ayurvedic drugs as well as cosmetics and is registered as dealer on the rolls of the third respondent under the A.P. General Sales Tax Act and CST Act. One of the products, which the petitioner deals in is called 'Navaratan Oil'. There is a dispute between the petitioner and the respondents whether the said item is to be classified as 'drug' or 'cosmetic' under the APGST Act. According to the petitioner, the said item is to be classified as 'drug' and therefore it is liable to pay tax at 10%, whereas according to the respondents, it falls under the category 'cosmetic' and taxable at 20% under the Act. A provisional assessment of the petitioner's tax liability for the period commencing from October, 2004 to January, 2005 was made treating the above-

mentioned item as 'cosmetic'. Aggrieved by the same, the petitioner carried the matter in appeal before the Appellate Deputy Commissioner. The said appeal was dismissed by an order dated 30.03.2005. Challenging the same, the petitioner carried the matter in further appeal before the Sales Tax Appellate Tribunal, which is still pending. In the meanwhile, on 26.04.2005 the second respondent passed an order levying penalty on the ground that the petitioner did not pay the appropriate amount of tax. Aggrieved by the same, the petitioner carried the matter in another appeal before the Sales Tax Appellate Tribunal and the same is pending. Along with the appeal, the petitioner also moved an application before the second respondent seeking stay of the recovery of the penalty during pendency of the appeal. The second respondent by his order dated 11.09.2006 rejected the said application. Hence, the present writ petition.

Heard the learned Government Pleader.

As there is a dispute about the classification of the product of the petitioner, which is pending adjudication before the Tribunal, we are of the opinion that the writ petition can be disposed of at the admission stage itself by directing the respondents not to take any coercive steps for recovery of the penalty during the pendency of the appeal before the Sales Tax Appellate Tribunal.

With the above direction, the writ petition is disposed of.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

29TH DECEMBER, 2006
PGS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.24839 OF 2006
(Per Sri Justice J.Chelameswar)

29TH DECEMBER, 2006